1967

State of Utah v. James Lee Little : Brief of Appellant

IN THE SUPREME COURT

of the

STATE OF UTAH

STATE OF UTAH, :

Respondent, : Case No. 10654

:

-vs.-

:

JAMES LEE LITTLE, :

Appellant. :

BRIEF OF APPELLANT

JAMES LEE LITTLE
Appellant in pro se
Box 250
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STATEMENT OF THE CASE

This appeal is brought by appellant from an order denying the appellant's motion for new trial, as entered by the Honorable Bryant H. Croft, District Judge, in the Third Judicial District, Salt Lake County.

The appellant is hereinafter refered to as Defendant and Respondent, State, as they appeared below.

The Defendant was charged with the crimes of Armed Robbery and Grand Larceny. At the trial by jury he was found guilty of both counts and subsiquently sentenced to serve two sentences of NOT LESS THAN FIVE YEARS AND W HICH MAY BE FOR LIFE; and NOT LESS THAN ONE YEAR NOR M MORE THAN TEN YEARS. From this conviction's Defendant appeals.

Prior to the filing of this appeal, counsel for the Defendant moved for a new trial on the ground that:

Sections 76-1-23 and 77-24-13, U.C.A. 1953, specifically provides that a defendant may not be punished for the same act in more than one way, and that he shall not be twice put in jeopardy for the same act, and upon the ground that conviction and punishment of both

the crime of grand larceny, and the crime of robbery, both arising out of the self same act or acts is repugnant to the statutes above quoted, and contrary to the provisions of law and justice. (R.61)

The appellant raises the following points.

POINT ONE

THE DISTRICT COURT DENIED DEFENDANT THE FAIR TRIAL PROVIDED FOR BY THE DUE PROCESS CLAUSE OF THE UTAH CONSTITUTION AND CONSTITUTION OF THE UNITED STATES IN DENYING DEFENDANT'S MOTION FOR A TRANSCRIPT OF THE MENTAL HEARING HELD APRIL 27, 1965.

POINT TWO

THE DISTRICT COURT ERRED IN DENYING DEFENDANT'S MOTION FOR NEW TRIAL, AND MOTION TO SET ASIDE CONVICTION AND SENTENCE IN THAT DEFENDANT WAS SUBJECTED TO DOUBLE JEOPARDY.

POINT THREE

APPELLANT HAS BEEN DENIED DUE PROCESS OF LAW IN VIOLATION OF STATE AND FEDERAL CONSTITUTION IN THAT HE IS DENIED COUNSEL ON APPEAL.

ARGUMENT

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POINT ONE

THE DISTRICT COURT DENIED DEFENDANT THE FAIR TRIAL PROVIDED FOR BY THE DUE PROCESS CLAUSE OF THE UTAH CONSTITUTION AND CONSTITUTION OF THE UNITED STATES IN DENYING DEFENDANT'S MOTION FOR A TRANSCRIPT OF THE MENTAL HEARING HELD APRIL 27, 1965.

At the Mental Hearing held at the County Hospital on Tuesday, April 27, 1965, appellant herein was adjudged legally insane by the Honorable Joseph G. Jepson, pursuant to the oral sworn testimony of two competent psyciatrist's, Enoch D. Dangerfield, and Eugene E. Montgomery, Doctors and psyciatrist's.

At the Mental Hearing April 27, 1965, Defendant was adjudged legally insane and committed to the Utah State Hospital for treatment. The two testifying psychiatrist's both having testified that Defendant was suffering from a schzophrenic reaction, paranoid type. Both Doctors testified that he would, in their opinion, be unable to aid in his own defense at that time.

Dr. Dangerfield in particular went into more detail through questioning in regard to Defendant's illness.

the Court is refered to the transcript of mental hearing, hereinafter designated by: (M.H.T.)

Q. Did you reach a diagnosis?

A. I did.

Q. What is that diagnosis?

A. I have said in my letter to the Court I feel it is a schizophrenic reaction, paranoid type of long standing duration.

Q. At the present time do you think he could cooperate in his own defense?

A. I do not believe he could defend himself adequately.

Q. At the time of your examination do you have an opinion as to whether or not he knew the difference between right and wrong?

A. I have an opinion.

Q. Will you state it?

A. I believe he has a mental condition of such a type that whatever thoughts he was preoccupied with at the time, any specific time, would be more important than maybe his indirect knowledge of right and wrong.

Q. Do you have an opinion as to whether he had a mental disease such as would prevent him from controlling his impulses?

A. I believe his mental illness is of such a degree he would have very much difficulty in controlling his impulses. (M.M.T.2,3)

Q. Doctor, are these opinions based on what you observed at the time you examined him?

A. That is right.

Q. Could these have been changed under other surroundings-I mean, for instance, prior to this time?

A. It would be my opinion prior to this time he would be ill, as when I saw him.

Q. Would your opinion as to him knowing the difference between right and wrong, depend upon the behavior pattern at that particular time rather than what you observed of him at the time of your examination?

A. That is a little long, would you refrase that?

Q. Let me rephrase it, Doctor. Would you expect, with his mental condition, a change in behavior pattern from time to time?

A. His disease is of the type could be worse or better in degrees from one time to another.

Q. And if that got better from time to time would that make a difference as to whether or not he would recognize the difference between right and wrong?

A. The way I would describe it, would be his intellectual feeling and understanding about right and wrong might be a little more clear at one time than another, but I think that at any given time, he would have quite a bit of influence by his mental condition, his desease, as such. (M.H.T.3,4)

At the trial, at which Dr. Montgomery did not testfy, Dr. Dangerfield's recollection was clouded with an eight month laps between trial and examination. His testimony at the trial was intirely different than that of the testimony given at the mental hearing April 27, 1965, in that his testimony was filled with uncertainty and doubt. In fact in reading over the testimony given at both hearings, the testimony given at the trial appears to be that of a hostile witness.

Appellant herein submits that under the circumstances, a transcript of the Mental Hearing of April 27, 1965, was

imperitive to his cause, and that justice of the matter demanded the same, and denial of same by the District Court was complete disregard of Due Process and denied the Defendant the right to a fair trial preserved by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

Further still, the Defendant having been adjudged legally insane by the Third District Court on the 27th day of April, 1965, was entitled to an equital. State v. Green, 72 Utah 530, 6 P.2d 177 (1936)

POINT TWO

THE DISTRICT COURT ERRED IN DENYING DEFENDANT'S MOTION FOR NEW TRIAL, AND MOTION TO SET ASIDE CONVICTION AND SENTENCE IN THAT DEFENDANT WAS SUBJECTED TO DOUBLE JEOPARDY.

The act of Robbery and the act of Larceny constituted one and the same act. The Court is refered to MEMORANDUM IN SUPPORT OF MOTION FOR NEW TRIAL for full arguement on this point. (R.70-74)

POINT THREE

APPELLANT HAS BEEN DENIED DUE PROCESS OF LAW IN VIOLATION OF STATE AND FEDERAL CONSTITUTION IN THAT HE IS DENIED COUNSEL ON APPEAL.

After considerable delay in appellants appeal, appellant contacted his Court appointed counsel and asked him to withdraw as counsel on appeal. The record in the instant case was filed in the Supreme Court on the 10th day of June, 1966. September 25, 1966, appellant wrote Mr. Mitsunaga (Court appointed appellate counsel) to withdraw as counsel on appeal. Rule 75 (a) (1) U.C.A., 1953, provides that upon filing of the record in the State Supreme Court, appellant's brief is to be filed within 30 days thereafter. Mr. Mitsunaga had taken over 90 days in the instant case and still had not filed a brief.

It is the opinion of appellant that Mr. Mitsunaga had no intention of filing a brief in appellant's behalf, and that his sole intention was to sell your appellant down the river. Consiquently Mr. Mitsunaga was ask to withdraw as counsel on appeal.

This Court in denying appellant counsel on appeal has deprived appellant of Due Process of Law preserved by

Article one Section seven of the Utah Constitution and Amendments V, and XIV of the United States Constitution , and appellant should be discharged from custody.

CONCLUSION

The District Court should be reversed and appellant discharged from custody.

Respectfully Submitted,

James Lee Little

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